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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/771,616	02/04/2004	George T. Bertram	D-20091-02	1072

7590

02/22/2005

Sealed Air Corporation  
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EXAMINER
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FOSTER, JIMMY G

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 02/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/771,616	Applicant(s) BERTRAM ET AL.	
	Examiner Jimmy G Foster	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1 and 5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/4/04</u> . | 6) <input type="checkbox"/> Other: ____.  |

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1) Claim 1 is objected to as including typographical errors. In line 5 of claim 1, "pen-nit" apparently should be "permit". In line 11 of claim 1, "rapture" apparently should be "rupture".

2) Claims 1 and 5 are considered to distinguish over the prior art.

3) The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4) Claim 1 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. Patent No 6,712,201 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-15 of the patent include substantially all of the subject matter set forth in present claim 1. The patent claims call for a vented bag, a foam precursor packet in the bag, first and second compartments in the packet separated by a frangible seal, a second frangible seal between one of the compartments and the enclosed space in the bag, a first foam precursor component in the first packet compartment, a second foam precursor component in the second

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compartment of the packet, the foam which will result from the mixing of the components filling the interior space of the bag, peel strengths of one to twelve pounds per inch or less for the frangible seals.

5) Claim 5 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. Patent No. 6,712,201 B1, as applied to present claim 1 above, and further in view of Fitts (3,419,134). The reference of Fitts, for example with respect to Figure 6, suggests that an inner mixing packet/envelope in an outer bag/envelope may be secured in the bag such as by heat seal. This clearly functions to maintain the location of the packet in the bag in a single, predetermined place in the bag. Accordingly, heat sealing is a suitable manner of securing an inner packet in an outer bag; this is therefore equivalent Applicant's disclosed securing means since Applicant's description describes securement in a suitable manner. Therefore, it would have been further obvious in view of Fitts to have secured the packet of the patent claims (of 6,712,201) in the bag to maintain the location of the packet in a predetermined place in the bag.

6) Claims 1 and 5 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 42 of U.S. Patent No 5,699,902. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 42 of the patent includes substantially all of the subject matter set forth in present claims 1 and 5, except for the strength of the frangible seals. The patent claims

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call for a vented first bag, a foam precursor packet/second bag secured in the in the first bag, compartments/cells in the packet/second bag separated by a frangible seal, another frangible seal between the first and second bags and therefore between one of the compartments/cells and the enclosed space in the first bag, a first and second foam precursors in the cells, respectively, that the foam which will result from the mixing of the components filling the interior space of the bag.

The frangible seals claimed (in the patent claim) will inherently have a bond strength which is weak enough to be broken. Regarding, the particular strength presently claimed, it has been held that it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. The examiner asserts that this concept, would extend to where the general condition is already covered in the patent claim (with respect to obviousness-type double patenting). Therefore, it would have been obvious, as merely discovering a workable range for a general condition of frangible seal bond strength already inherently covered in patent claim 42, to have used any particular workable range regarding the bond strength to form the frangible seals, including the range presently claimed.

Regarding present claim 5, the second bag of the patent claim is claimed as being joined to an edge of the first bag. The examiner asserts that adhesive (the securing means disclosed by the present application) is a known manner of securing things together, allowing securement by mere pressing of the things together. Therefore, it would have been further obvious to used an adhesive for the securement of the second bag to the first bag which is claimed in patent claim 42, for the purpose of achieving the connection by pressing portions of the bags together.

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7) . Claims 1 and 5 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 42 of U.S. Patent No 5,899,325. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 9 of the patent includes substantially all of the subject matter set forth in present claims 1 and 5 except for the bond strength of the frangible seals. The patent claims call for a vented bag, a foam precursor packet in the bag, first and second compartments in the packet separated by a frangible seal, a second frangible seal between one of the compartments and the enclosed space in the bag, a first foam precursor component in the first packet compartment, a second foam precursor component in the second compartment of the packet, that the foam which will result from the mixing of the components filling the interior space of the bag, and the packet being secured in the bag with an adhesive (regarding present claim 5).

The frangible seals claimed (in the patent claim) will inherently have a bond strength which is weak enough to be broken. Regarding, the particular strength presently claimed, it has been held that it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. The examiner asserts that this concept would extend to where the general condition is already covered in the patent claim (with respect to obviousness-type double patenting). Therefore, it would have been obvious, as merely discovering a workable range for a general condition of frangible seal bond strength already inherently covered in patent claim 9, to have used any particular workable range regarding the bond strength to form the frangible seals, including the range presently claimed.

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8) Although Applicant has filed a terminal disclaimer with respect to U.S. Patents 5,699,902 and 5,899,325 on February 4, 2004, the terminal disclaimer refers to "the double patenting rejection" and therefore will not be approved until a double patenting rejection has actually been made. Therefore, the terminal disclaimer will not be reviewed for approval until this Office action is mailed out and is made a part of the prosecution history of the application.

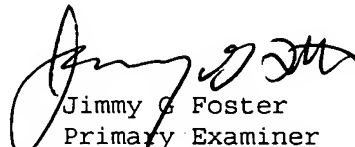
Additionally, a terminal disclaimer regarding the U.S. Patent 6,712,201 will be required to overcome the double patenting rejection (above) regarding that patent - if applicant does not attempt to overcome the rejection in another manner, such as by modifying the claims.

9) Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jimmy G Foster whose telephone number is (571) 272-4554. The examiner can normally be reached on Mon-Fri, 8:45 am - 5:15 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.



Jimmy G Foster  
Primary Examiner  
Art Unit 3728

JGF  
18 February 2005